



FEDERAL ELECTION COMMISSION

WASHINGTON, D C 20463

JAN 28 2005

Via Certified Mail, Return Receipt Requested

Mr. Thomas Willsey
18 Broad Street
Wethersfield, Connecticut 06109-3103

RE: MUR 5453

Dear Mr. Willsey:

On January 24, 2005, the Federal Election Commission found that there is reason to believe you knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f, provisions of the Federal Election Campaign Act of 1971, as amended ("the Act"). These findings were based upon information ascertained in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2). The Factual and Legal Analysis, which more fully explains the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of your receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

In order to expedite the resolution of this matter, the Commission has also decided to offer to enter into negotiations directed towards reaching a conciliation agreement in settlement of this matter prior to a finding of probable cause to believe. Enclosed is a conciliation agreement that the Commission has approved.

If you are interested in expediting the resolution of this matter by pursuing preprobable cause conciliation, and if you agree with the provisions of the enclosed agreement, please sign and return the agreement, along with the civil penalty, to the Commission. In light of the fact that conciliation negotiations, prior to a finding of probable cause to believe, are limited to a maximum of 30 days, you should respond to this notification as soon as possible.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be

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demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

For your information, we have enclosed a brief description of the Commission's procedures for handling possible violations of the Act. If you have any questions, please contact Alexandra Doumas, the attorney assigned to this matter, at (202) 694-1650.

Very truly yours,



Scott E. Thomas
Chairman

Enclosures

Factual and Legal Analysis

Procedures

Designation of Counsel Form

Conciliation Agreement

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1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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5 RESPONDENT: Thomas Willsey

MUR 5453

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7 **I. GENERATION OF THE MATTER**

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9 This matter was generated based on information ascertained by the Federal Election
10 Commission ("the Commission") in the normal course of carrying out its supervisory
11 responsibilities. *See* 2 U.S.C. § 437g(a)(2).¹

12 **II. FACTUAL AND LEGAL ANALYSIS**

13 In April of 2000, Thomas Willsey was President of Arthur A. Watson & Company, Inc.
14 ("the Company").² He was approached by an officer of the Company, who suggested that
15 employees of the company make contributions to the Giordano for U.S. Senate Committee ("the
16 Committee"). This officer also suggested that the Company reimburse the employees for the
17 contributions. In total, five employees and their spouses made contributions to the Committee,
18 \$2,000 per couple. Mr. Willsey consented to and devised a scheme for the Company to
19 reimburse the employees for those contributions. The Company then reimbursed four of those
20 employees for the total amount of their contributions, disguising the reimbursements as
21 commissions or salaries. The total amount of the reimbursed contributions made by the
22 Company was \$8,000.

¹ All of the facts in this matter occurred prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002). Accordingly, unless specifically noted to the contrary, all citations to the Act herein are as it read prior to the effective date of BCRA and all citations to the Commission's regulations herein are to the 2002 edition of Title 11, Code of Federal Regulations, which was published prior to the Commission's promulgation of any regulations under BCRA

² Arthur A. Watson & Company, Inc. is a corporation organized under the laws of Connecticut. At some point after the events in this matter occurred, Arthur A. Watson & Company, Inc. was purchased by BankNorth, and is now wholly owned by BankNorth. Since BankNorth is assuming liability for Arthur A. Watson & Company, Inc., the term "the Company" as used herein refers to both entities.

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1 By consenting to the Company's reimbursement of the contributions to its employees and
2 knowingly reimbursing those employees, Mr. Willsey violated 2 U.S.C. §§ 441b(a) and 441f. It
3 is unlawful for any officer of a corporation to consent to any corporate expenditure which may be
4 prohibited contributions to candidates or committees. 2 U.S.C. § 441b(a). Moreover, no person
5 may knowingly help or assist any person in making a contribution in the name of another.
6 2 U.S.C. § 441f; 11 C.F.R. § 110.4(b)(1)(iii).

7 The phrase knowing and willful indicates that "actions [were] taken with full knowledge
8 of all of the facts and a recognition that the action is prohibited by law." 122 Cong. Rec. H 2778
9 (daily ed. May 3, 1976); *see also Federal Election Comm'n v. John A. Dramesi for Cong.*
10 *Comm.*, 640 F. Supp. 985, 987 (D.N.J. 1986) (distinguishing between "knowing" and "knowing
11 and willful"). A knowing and willful violation may be established "by proof that the defendant
12 acted deliberately and with knowledge" that an action was unlawful. *United States v. Hopkins*,
13 916 F.2d 207, 214 (5th Cir. 1990). In *Hopkins*, the court found that an inference of a knowing
14 and willful violation could be drawn "from the defendants' elaborate scheme for disguising their
15 ... political contributions...." *Id.* at 214-15. The court also found that the evidence did not have
16 to show that a defendant "had specific knowledge of the regulations" or "conclusively
17 demonstrate" a defendant's state of mind," if there were "facts and circumstances from which the
18 jury reasonably could infer that [the defendant] knew her conduct was unauthorized and illegal."
19 *Id.* at 213 (quoting *United States v. Bordelon*, 871 F.2d 491, 494 (5th Cir.), *cert. denied*, 439 U.S.
20 838 (1989)). Finally, "[I]t has long been recognized that 'efforts at concealment [may] be
21 reasonably explainable only in terms of motivation to evade' lawful obligations." *Id.* at 214
22 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

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1 Mr. Willsey, as President of the Company, consented to the use of corporate funds to
2 reimburse employees for their contributions to the Committee by devising the scheme and
3 approving the contributions and subsequent reimbursements. Mr. Willsey's attempts to conceal
4 the reimbursements by disguising the reimbursements as commissions or salary, demonstrate he
5 knew it was improper to reimburse the employees. Given the actions Mr. Willsey took in
6 devising a scheme to reimburse employees' political contributions with Company funds and
7 concealing the reimbursements, this Office recommends that the Commission find reason to
8 believe Mr. Willsey knowingly and willfully violated 2 U.S.C. §§ 441b(a) and 441f.

9 Based on the foregoing, there is reason to believe that Thomas Willsey knowingly and
10 willfully violated 2 U.S.C. §§ 441b(a) and 441f.

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